IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.27 OF 2004

Shaik Ibrahim Kassim (since deceased)
through his legal representatives :

a) Sheik Bashir Ahmed,
b) Firoza Bi Sheik Bashir Ahmad,
c) Sheik Abdul Rab Ahmad,
d) Noorjahan Bi Abdul Rab Ahmad,
e) Sheik Gulzar Ahmad,
f) Aisha Bi Sheik Gulzar Ahmad,
g) Sheik Nazir Ahmad,

All above residing at House No.566,
St. Inez, Panaji, Ilhas, Goa.

h) Aisha Bi,
i) Sheik Mohamad Nassir,
Both residing at Islampura, Baina,
Opp. Islampura Masjid,
Vasco da Gama, Goa. ..... Petitioners.

V/s.

1. Salima Bi, wife of Shaik Hussein,
residing at House No.24,
Near Banana Wholesale Market,
Bhatulem, Panaji, Goa.

2. Patriarchate (Patriarcado da Indias
Orientais) or Mitra, through the
Procurator with Office at Patriarchal
Palace, Altinho, Panaji, Goa. ..... Respondents.

Mr. M. B. D'Costa, Sr. Advocate with Mr. J.A. Lobo, Advocate for the petitioners.

Ms. Amira Razak, Advocate for respondent No.1.

CORAM : S.S. PARKAR, J.

DATE : 29TH JULY, 2005.

ORAL ORDER :

Heard both sides.

2. This revision application has been filed by the original defendant No.2, challenging the Order dated 16.7.2004, passed by the trial Court rejecting the preliminary issues of *res judicata*, limitation and the point raised under Order 2, Rule 2 of the C.P.C. by the appellant/defendant. All these points were decided by the trial Court on the application made in that behalf by the defendant/appellant, but without framing the necessary issues in that behalf. On behalf of the respondents/plaintiffs decisions of the Supreme Court have been cited, including the latest decision in the case of ***V. RAJESHWARI (SMT.) vs. T.C. SARAVANABAVA,*** (2004(1) SCC 551), taking the view that the issue of *res judicata* cannot be decided unless not only the necessary pleadings have been made in that behalf, but also the evidence is led and the documents produced to substantiate that plea. This could be done either by framing those issues as preliminary issues and allowing parties to lead evidence or at the trial of the suit itself.

3. Counsel on both the sides state that original defendant No.2

is dead and the respondent No.1/original plaintiff No.1 is aged above 70 years and, therefore, the trial of the suit itself is required to be expedited. The learned Counsel for the petitioner states that the necessary evidence will be led on behalf of the petitioner to substantiate the plea of bar of *res judicata* and limitation and also the bar under Order 2, Rule 2 raised by him in the trial Court.

4. Considering that the necessary issues in respect of the pleas raised on behalf of the defendants were not framed by the trial court, it would be desirable to quash the impugned Order and remand the matter to the trial Court to frame all the issues arising in the suit and hold the trial of the suit itself and thereafter to dispose of the suit in accordance with law.

5. In the result, this revision application is allowed, the impugned order is set aside and the matter is remanded to the trial Court. The trial Court is directed to frame all the issues arising in the suit, including the issues decided by the impugned Order and dispose of the suit expeditiously before the end of July, 2006. The Civil Revision Application shall stand disposed of accordingly.

S.S. PARKAR, J.

ssm.